

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---



EUSTACE A. MENDEZ,

Plaintiff,

v.

23-CV-42 (JLS) (HKS)

JOSEPH KESSLER, NANCY  
HARVEY, JUSTIN PRUYNE, JUSTIN  
DRISCOL, and NEW YORK POWER  
AUTHORITY,

Defendants.

---

### **DECISION AND ORDER**

Plaintiff Eustace A. Mendez commenced this action on January 19, 2023 asserting race and age discrimination claims against Joseph Kessler, Nancy Harvey, Justin Pruyne, and Justin Driscol under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”) and the Age Discrimination in Employment Act of 1967, 42 U.S.C. §§ 621 *et seq.* (“ADEA”). Dkt. 1. This Court referred the case to United States Magistrate Judge H. Kenneth Schroeder, Jr. for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 4.

Following a motion to dismiss (Dkt. 2), Plaintiff filed an Amended Complaint naming New York Power Authority as an additional defendant. *See* Dkt. 6.<sup>1</sup> Defendants moved to dismiss the Amended Complaint. Dkt. 9. Plaintiff opposed the motion, Dkt. 11, and Defendants replied. Dkt. 12.

---

<sup>1</sup> Plaintiff also listed “national origin, ethnic background, and gender” as additional alleged bases of discrimination.

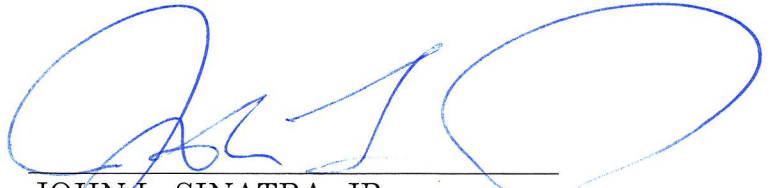
On February 27, 2024, Judge Schroeder issued a Report and Recommendation (“R&R”), recommending that Defendants’ [9] motion to dismiss be granted. *See* Dkt. 17. Plaintiff objected to the R&R. Dkt. 19. Defendants opposed the objections, Dkt. 22-23, and Plaintiff replied. Dkt. 328.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R, the objections briefing, and the relevant record. Based on its *de novo* review, the Court accepts Judge Schroeder’s recommendation.

For the reasons stated above and in the R&R, this Court GRANTS Defendants' [9] motion to dismiss. The Amended Complaint is dismissed. The dismissal is without leave to amend because further amendment, on this record, would be futile. *See Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (denying leave to amend a *pro se* complaint where amendment would be futile). The Clerk of Court shall close the case. SO ORDERED.

Dated: April 22, 2024  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE